

1 RICHARD DOYLE, City Attorney (#88625)
2 GEORGE RIOS, Assistant City Attorney (#077908)
3 DAISY M. NISHIGAYA, Deputy City Attorney (#186614)
4 Office of the City Attorney
5 200 E. Santa Clara Street
6 San Jose, California 95113
7 Telephone: (408) 535-1900

8 Attorneys for Plaintiff CITY OF SAN JOSE and
9 PEOPLE OF THE STATE OF CALIFORNIA

10 DENIS F. SHANAGHER (#100222)
11 LUCE, FORWARD, HAMILTON & SCRIPPS LLP
12 121 Spear Street, Suite 200
13 San Francisco, CA 94105
14 Telephone: (415) 356-4626

15 Attorneys for Plaintiff GINDIN-R&B COMPANY

16 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

17 CITY OF SAN JOSE; PEOPLE OF THE
18 STATE OF CALIFORNIA; GINDIN-R&B
19 COMPANY

20 Plaintiff,

21 vs.

22 MARTIN & ROSANNA ALVAREZ, et al.

23 Defendants.

NO. 1-96-CV 759667

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO MODIFY THE
PERMANENT INJUNCTION AND
FINAL JUDGMENT PURSUANT
TO STIPULATION FILED ON
APRIL 11, 1997**

DATE: January 29, 2010

TIME: 9:00 a.m.

DEPT: 5

JUDGE: Hon. Mary Jo Levinger

24 **TO:** The Property Owners of Record for the Following Properties located in the City of
25 San Jose, County of Santa Clara, California, that are the subject of the Permanent Injunction
26 and Final Judgment Pursuant to Stipulation filed on April 11, 1997 (hereinafter "1997
27 Permanent Injunction"), and subsequent Stipulated Modifications to Permanent Injunction
28

1 and Final Judgment Pursuant to Stipulation filed on and between October 17, 2003, and
2 September 26, 2007, (hereinafter "Stipulated Modifications"):

3 **NOTICE IS HEREBY GIVEN TO THE FOLLOWING REAL PROPERTIES AND**
4 **THEIR OWNERS OF RECORD:**

- 5 1. 1330 Carnelian Drive, owned by **VICTOR M. ALVAREZ** and **ANGELICA M.**
6 **ALVAREZ**
- 7 2. 1339 Carnelian Drive, owned by **FATMIR ALAJ** and **SUZANA ALAJ**
- 8 3. 1340 Carnelian Drive, owned by **RUSSELL K. TARANTO**
- 9 4. 1351 Carnelian Drive, owned by **RIGOBERTO VILLA**
- 10 5. 1352 Carnelian Drive, owned by **ALLEN WONG** and **LILLIAN WONG**
- 11 6. 1359 Carnelian Drive, owned by **HENRY H. AU**, **YEN L. AU**, and **MINH HOC**
12 **AU**
- 13 7. 1360 Carnelian Drive, owned by **BERNARDINO A. GABRIEL** and **HONORIA T.**
14 **GABRIEL**
- 15 8. 1371 Carnelian Drive, owned by **MANUEL TORRES**, **ORLANDO TORRES**,
16 and **CESAR TORRES**
- 17 9. 1372 Carnelian Drive, owned by **VINCENTE J. ALVAREZ** and **CARMEN**
18 **ALVAREZ**
- 19 10. 1379 Carnelian Drive, owned by **ALI FATAPOUR** and **SHOHREH FATAPOUR**
- 20 11. 1387 Carnelian Drive, owned by **DDS INVESTMENT GROUP, INC. (DYLAN**
21 **NGUYEN, AGENT FOR SERVICE OF PROCESS)** and **NGA T. VO**
- 22 12. 1404 Carnelian Drive, owned by **CARLOS LOPEZ** and **SAN JUANA JEANNIE**
23 **LOPEZ**
- 24 13. 1405 Carnelian Drive, owned by **RAUL M. LOPEZ** and **CELIA C. LOPEZ**
- 25 14. 1411 Carnelian Drive, owned by **SAMUEL LUQUIN**
- 26 15. 1412 Carnelian Drive, owned by **NANFANG HU** and **XIAOQING MA**
- 27 16. 1436 Carnelian Drive, owned by **JOSE ERNESTO RAMIREZ**
- 28

- 1 17. 1324 Crucero Drive, owned by **ROGER T. LE** and **VICTORIA T. PHAM**
- 2 18. 1328 Crucero Drive, owned by **ADILIA MARTINEZ**
- 3 19. 1332 Crucero Drive, owned by **JONATHAN M. MARIANO** and **LIGAYA**
- 4 **MARIANO**
- 5 20. 1334 Crucero Drive, owned by **ANNIE THACH NIM**
- 6 21. 1339 Crucero Drive, owned by **ARNOLD ORTIZ** and **REINEE MARIE ORTIZ**
- 7 22. 1550 Crucero Drive, owned by **ALLEN WONG**
- 8 23. 1558 Crucero Drive, owned by **MASAE TOLLER** and **WILLIAM TOLLER**
- 9 24. 1574 Crucero Drive, owned by **JUAN GONZALEZ GALLO** and **OBDULIA**
- 10 **ALVAREZ GONZALEZ**
- 11 25. 1594 Crucero Drive, owned by **MARK DAI**
- 12 26. 1604 Crucero Drive, owned by **JOE ABEL PONTE** and **MARIA E. PONTE**
- 13 27. 1612 Crucero Drive, owned by **GARY G. ZHANG**
- 14 28. 1620 Crucero Drive, owned by **AGUSTIN GONZALEZ** and **SILVINA**
- 15 **GONZALEZ, TRUSTEES OF THE 2002 GONZALEZ FAMILY TRUST DATED**
- 16 **JULY 19, 2002**
- 17 29. 1640 Crucero Drive, owned by **BE NGUYEN**
- 18 30. 1352 Dubert Lane, owned by **SILAS NWAGWU** and **VIVIAN NWAGWU**
- 19 31. 1353 Dubert Lane, owned by **SANTOS SANCHEZ, SR.** and **ESPERANZA**
- 20 **SANCHEZ**
- 21 32. 1360 Dubert Lane, owned by **PETER ASPOY**
- 22 33. 1368 Dubert Lane, owned by **JIMMY LEE**
- 23 34. 1369 Dubert Lane, owned by **YUNG LE**
- 24 35. 1384 Dubert Lane, owned by **EFRAIN RAMOS** and **MARITZA R. RAMOS**
- 25 36. 1385 Dubert Lane, owned by **SILVESTRE C. DUENAS** and **MARIA TERESA**
- 26 **DUENAS, TRUSTEES OF THE SILVESTRE C. DUENAS AND MARIA**
- 27 **TERESA DUENAS 2001 LIVING TRUST**
- 28

- 1 37. 1400 Dubert Lane, owned by **TERESA Y. HUNG** and **HUI CAI**
- 2 38. 1401 Dubert Lane, owned by **TORBIO VALDIVIA** and **LUZ VALDIVIA**
- 3 39. 1408 Dubert Lane, owned by **JOHN IWANAGA**
- 4 40. 1409 Dubert Lane, held in title by **CAL WESTERN RECON CORP (FOR)**
- 5 **BANK OF AMERICA**
- 6 41. 1417 Dubert Lane, owned by **HAWK L. LOU** and **KETTY FONG LOU**
- 7 42. 1424 Dubert Lane, owned by **EDWARD BARR, TRUSTEE OF THE EDWARD**
- 8 **T. BARR TRUST, BY HIS ATTORNEY IN FACT, KIM B. NGUYEN**
- 9 43. 1441 Dubert Lane, owned by **HORTENCIA MAGANA**
- 10 44. 1449 Dubert Lane, owned by **GUILLERMO GUZMAN** and **THEODORA**
- 11 **GUZMAN**
- 12 45. 1328 Santee Drive, owned by **HARDEV S. TAKHAR** and **KANWAJIT K.**
- 13 **TAKHAR**
- 14 46. 1338 Santee Drive, owned by **MANH LE** and **HOA LI**
- 15 47. 1351 Tami Lee Drive, owned by **Adalberto Vargas** and **MARIA Z. VARGAS**
- 16 48. 1359 Tami Lee Drive, owned by **AMEDEO F. CARUANA**
- 17 49. 1360 Tami Lee Drive, owned by **ELIZABETH LY**
- 18 50. 1375 Tami Lee Drive, owned by **JOE M. CABRERA** and **MARTHA M.**
- 19 **CABRERA**
- 20 51. 1383 Tami Lee Drive, owned by **VIET QUOC NGO** and **KIM OANH NGO**
- 21 52. 1391 Tami Lee Drive, owned by **JUVENAL CARRASCO**
- 22 53. 1398 Tami Lee Drive, owned by **JOB CRUZ** and **JULIA CRUZ**
- 23 54. 1399 Tami Lee Drive, owned by **EMILIO L. ESTRADA** and **REYNA VALENCIA**
- 24 **ESTRADA**
- 25 55. 1406 Tami Lee Drive, owned by **PARAMJIT S. JOHL**
- 26 56. 1407 Tami Lee Drive, owned by **HUOT V. HUA** and **HONG HUA**
- 27
- 28

1 57. 1414 Tami Lee Drive, owned by **VERN C. VANDERBILT** and **LYNNE H.**
2 **BROWN, COTRUSTEES OF THE VANDERBILT/BROWN FAMILY TRUST**
3 **DATED 1/13/04**

4 58. 1431 Tami Lee Drive, owned by **HUNG LAM** and **THAO DU**

5 59. 1438 Tami Lee Drive, owned by **WESLEY CHENG** and **JULIE CHENG**

6 60. 1439 Tami Lee Drive, owned by **ANAMARIA ESQUIVEL** and **MARTIN**
7 **ESQUIVEL**

8 **YOU ARE HEREBY NOTIFIED** that on **January 29, 2010**, at 9:00 a.m., in Department
9 5 of the above-entitled Court located at 191 North First Street, San Jose, California, Plaintiff
10 will move this Court for an Order to Modify the Permanent Injunction and Final Judgment
11 Pursuant to Stipulation filed on April 11, 1997 ("1997 Permanent Injunction") that covers 60
12 subject properties in the neighborhood commonly referred to as Santee. Plaintiff moves to
13 Modify Paragraph 33 of the 1997 Permanent Injunction to be continuing in nature with no
14 specific review date and to state:

15 Each and all of the requirements for compliance with the terms and provisions
16 of this Permanent Injunction and Final Judgment Pursuant to Stipulation shall
17 be continuing in nature. This provision supersedes the date set for review in
Paragraph 33 of the Permanent Injunction.

18 On and between October 17, 2003, and September 26, 2007, this Court entered 60
19 Stipulated Modifications to the 1997 Permanent Injunction. Paragraph 3 of the Stipulated
20 Modifications supersedes Paragraph 33 of the 1997 Permanent Injunction and states:

21 The Court shall conduct a review of the status of the Permanent Injunction as
22 to the Subject Property on or about **January 31, 2010**, to determine whether
23 the terms and conditions of the Permanent Injunction, in whole or in part, shall
24 be extended, modified, or dissolved. This provision supersedes the date set for
review in paragraph 33 of the Permanent Injunction. The Permanent Injunction
and Modification thereto shall remain in full force and effect pending said
review by the Court.

25 (Emphasis in original.)

26
27 In 1996, this Court entered a Permanent Injunction and Final Judgment Pursuant to
28 Stipulation filed September, 1996, ("1996 Permanent Injunction") that covers 34 subject

1 properties in the neighborhood commonly referred to as Santee. The 1996 Permanent
2 Injunction is continuing in nature with no specific review date, as stated in Paragraph 25
3 thereto:

4 Each and all of the requirements for compliance with the terms and provisions
5 of this Permanent Injunction and Final Judgment Pursuant to Stipulation shall
6 be continuing in nature.

7 Plaintiff seeks to have both the 1996 Permanent Injunction and the 1997 Permanent
8 Injunction contain the same terms as stated above.

9 Plaintiff makes this Motion to Modify the 1997 Permanent Injunction pursuant to Code
10 of Civil Procedure section 533 and Civil Code section 3424 on the grounds that the Court
11 may modify a stipulated permanent injunction and final judgment upon a showing that "the
12 ends of justice would be served by the modification."

13 This motion will be based upon this Notice of Motion and Motion; the Memorandum of
14 Points and Authorities in Support thereof and filed herewith; the evidentiary Declarations and
15 Exhibits filed herewith including the Declarations and Exhibits thereto of Barbara C. Wright,
16 Patricia Ramos, Patricia Fay, Cynthia Johnson, Mohamed Ahmed, Leo Michael Tran, Alice
17 Ogasawara, Kelly Aronica, Shannon Denos, Wesley Cheng, Silvina Gonzalez, Alma R. Soto,
18 Teresa Varela, Miriam Lopez, Diego Rodriguez, Leticia Mayo, Sandra Aguirre, Dung Vu,
19 Maria Muniz, Jose Delgado, Belen Campos, Dave Storton and Joe Cabrera; the Request for
20 Judicial Notice and Exhibits thereto, the Joinder in Support of this Motion, and such further
21 matters as may be appropriately presented and argued at the hearing on this Motion.

22 Dated: December 23, 2009

RICHARD DOYLE, City Attorney

23
24 By 

Daisy M. Nishigaya
Deputy City Attorney

25
26 Attorneys for Plaintiff CITY OF SAN JOSE and
27 PEOPLE OF THE STATE OF CALIFORNIA
28